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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 11*th November,* 2004/*Kartika* 20, 1926 (*Saka*)

THE ENFORCEMENT OF SECURITY INTEREST AND RECOVERY OF DEBTS LAWS (AMENDMENT) ORDINANCE, 2004

No. 5 of 2004

Promulgated by the President in the Fifty-fifth Year of the Republic of India.

An Ordinance to amend the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, and further to amend the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the Companies Act, 1956.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

CHAPTER I

PRELIMINARY

Short title and commencement.

1. (*1*) This Ordinance may be called the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Ordinance, 2004.

(*2*) Save as otherwise provided in this Ordinance, the provisions of this Ordinance shall come into force at once.

CHAPTER II

AMENDMENTS TO THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002

Amendment of section 2.

2. In section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter in this Chapter referred to as the principal Act), in sub-section (*1*), 54 of 2002.

(*i*) after clause (*h*), the following clause shall be inserted, namely:—

'(*ha*) "debt" shall have the meaning assigned to it in clause (*g*) of section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993;'; 51 of 1993.

(*ii*) in clause (*j*), the words "in accordance with the directions or guidelines issued by the Reserve Bank" shall be omitted;

(*iii*) in clause (*o*), for the words "doubtful or loss asset, in accordance with the directions or under guidelines relating to assets classifications issued by the Reserve Bank", the following shall be substituted, namely:—

"doubtful or loss asset,—

(*a*) in case such bank or financial institution is administered or regulated by any authority or body established, constituted or appointed by any law for the time being in force, in accordance with the directions or guidelines relating to assets classifications issued by such authority or body;

(*b*) in any other case, in accordance with the directions or guidelines relating to assets classifications issued by the Reserve Bank";

(*iv*) in clause (*u*), for the words "trustee or any asset management company making investment on behalf of mutual fund or provident fund or gratuity fund or pension fund", the words, brackets and figures "trustee or securitisation company or reconstruction company which has been granted a certificate of registration under sub-section (*4*) of section 3 or any asset management company making investment on behalf of mutual fund" shall be substituted;

(*v*) in clause (*zd*), for sub-clause (*ii*), the following sub-clause shall be substituted, namely:—

"(*ii*) securitisation company or reconstruction company, whether acting as such or managing a trust set up by such securitisation company or reconstruction company for the securitisation or reconstruction, as the case may be; or".

Amendment of section 3.

3. In section 3 of the principal Act, in sub-section (*3*), after clause (*g*), the following clause shall be inserted at the end, namely:—

"(*h*) that securitisation company or reconstruction company has complied with one or more conditions specified in the guidelines issued by the Reserve Bank for the said purpose.".

Amendment of section 4.

4. In section 4 of the principal Act, in sub-section (*2*),—

(*a*) the words "rejection of application for registration or" shall be omitted;

(*b*) for the words "such order of rejection or cancellation", the words "such order of cancellation" shall be substituted.

Insertion of new section 5A.

5. After section 5 of the principal Act, the following section shall be inserted, namely:—

Transfer of pending applications to any one of Debts Recovery Tribunals in certain cases.

"5A. (*1*) If any financial asset, of a borrower acquired by a securitisation company or reconstruction company, comprise of secured debts of more than one bank or financial institution for recovery of which such banks or financial institutions has filed applications before two or more Debts Recovery Tribunals, the securitisation company or reconstruction company may file an application to the Appellate Tribunal having jurisdiction over any of such Tribunals in which such applications are pending for transfer of all pending applications to any one of the Debts Recovery Tribunals as it deems fit.

(*2*) On receipt of such application for transfer of all pending applications under sub-section (*1*), the Appellate Tribunal may, after giving the parties to the application an opportunity of being heard, pass an order for transfer of the pending applications to any one of the Debts Recovery Tribunals.

(*3*) Notwithstanding anything contained in the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, any order passed by the Appellate Tribunal under sub-section (*2*) shall be binding on all the Debts Recovery Tribunals referred to in sub-section (*1*) as if such order had been passed by the Appellate Tribunal having jurisidiction on each such Debts Recovery Tribunal.

51 of 1993.

(*4*) Any recovery certificate, issued by the Debts Recovery Tribunal to which all the pending applications are transferred under sub-section (*2*), shall be executed in accordance with the provisions contained in sub-section (*23*) of section 19 and other provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 shall, accordingly, apply to such execution.".

51 of 1993.

Amendment of section 7.

6. In section 7 of the principal Act,—

(*i*) after sub-section (*2*), the following sub-section shall be inserted, namely:—

"(*2A*) (*a*) The scheme for the purpose of offering security receipts under sub-section (*1*) or raising funds under sub-section (*2*), may be in the nature of a trust to be managed by the securitisation company or reconstruction company, and the securitisation company or reconstruction company shall hold the assets so acquired or the funds so raised for acquiring the assets, in trust for the benefit of the qualified institutional buyers holding the security receipts or from whom the funds are raised.

2 of 1882.

(*b*) The provisions of the Indian Trusts Act, 1882 shall, except in so far as they are inconsistent with the provisions of this Act, apply with respect to the trust referred to in clause (*a*) above.";

(*ii*) in sub-section (*3*), for the words "security receipts issued by such company", the words "security receipts issued under a scheme by such company" shall be substituted.

Insertion of new section 12A.

7. After section 12 of the principal Act, the following section shall be inserted, namely:—

Power of Reserve Bank to call for statements and information.

"12A. The Reserve Bank may at any time direct a securitisation company or reconstruction company to furnish it within such time as may be specified by the Reserve Bank, with such statements and information relating to the business or affairs of such securitisation company or reconstruction company (including any business or affairs with which such company is concerned) as the Reserve Bank may consider necessary or expedient to obtain for the purposes of this Act.".

Amendment of section 13.

8. In section 13 of the principal Act,—

(*i*) after sub-section (*3*), the following sub-section shall be inserted, namely:—

"(*3A*) If, on receipt of the notice under sub-section (*2*), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within one week of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower:

Provided that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under section 17 or the Court of District Judge under section 17A:

Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt.";

(*ii*) in sub-section (*4*), for clause (*b*), the following clause shall be substituted, namely:—

"(*b*) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt;".

Amendment of section 15.

9. In section 15 of the principal Act, in sub-section (*1*), for the words "When the management of business of a borrower is taken over by a secured creditor", the words, brackets, letters and figures "When the management of business of a borrower is taken over by a securitisation company or reconstruction company under clause (*a*) of section 9 or, as the case may be, by a secured creditor under clause (*b*) of sub-section (*4*) of section 13" shall be substituted.

Amendment of section 17.

10. In section 17 of the principal Act,—

(*a*) in sub-section (*1*),—

(*i*) for the words "may prefer an appeal", the words "may make an application along with such fee, as may be prescribed," shall be substituted and shall be deemed to have been substituted with effect from the 21st day of June, 2002;

(*ii*) after sub-section (*1*), the following proviso shall be inserted and shall be deemed to have been inserted with effect from the 21st day of June, 2002, namely:—

"Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.";

(*iii*) after the proviso as so inserted, the following *Explanation* shall be inserted, namely:—

"*Explanation.*—For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under sub-section (*1*) of section 17.";

(*b*) for sub-sections (*2*) and (*3*), the following sub-sections shall be substituted, namely:—

"(*2*) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (*4*) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

(*3*) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (*4*) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management of the secured assets to the borrower or restoration of possession of the secured assets to the borrower, it may by order, declare the recourse to any one or more measures referred to in sub-section (*4*) of section 13 taken by the secured assets as invalid and restore the possession of the secured assets to the borrower or restore the management of the secured assets to the borrower, as the case may be, and pass such order as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (*4*) of section 13.

(*4*) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (*4*) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (*4*) of section 13 to recover his secured debt.

(*5*) Any application made under sub-section (*1*) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (*1*).

(*6*) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (*5*), any part to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pedning application by the Debts Recovery Tribunal.

(*7*) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far may be, dispose of application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the rules made thereunder.".

51 of 1993.

11. After section 17 of the principal Act, the following section shall be inserted, namely:— Insertion of new section 17A.

"17A. In the case of a borrower residing in the State of Jammu and Kashmir, the application under section 17 shall be made to the Court of District Judge in that State having jurisdiction over the borrower which shall pass an order on such application. Making of application to Court of District Judge in certain cases.

Explanation:—For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons shall not entitle the person (including borrower) to make an application to the Court of District Judge under this section.".

12. In section 18 of the principal Act,— Amendment of section 18.

(*a*) in sub-section (*1*),—

(i) for the words and figures "under section 17, may prefer an appeal", the words and figures "under section 17, may prefer an appeal along with such fee, as may be prescribed" shall be substituted and shall be deemed to have been substituted with effect from the 21st day of June, 2002;

(ii) after sub-section (*1*), the following proviso shall be inserted and shall be deemed to have been inserted with effect from the 21st day of June, 2002, namely:—

"Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:";

(iii) after the proviso as so inserted, the following provisos shall be inserted, namely:—

"Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent. of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less:

Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent. of debt referred to in the second proviso.".

Insertion of new sections 18A and 18B.

13. After section 18 of the principal Act, the following sections shall be inserted, namely:—

Validation of fees levied.

"18A. Any fee levied and collected for preferring, before the commencement of the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Ordinance, 2004, an appeal to the Debts Recovery Tribunal or the Appellate Tribunal under this Act, shall be deemed always to have been levied and collected in accordance with law as if amendments made to sections 17 and 18 of this Act by sections 11 and 12 of the said Ordinance were in force at all material times.

Appeal to High Court in certain cases.

18B. Any borrower residing in the State of Jammu and Kashmir and aggrieved by any order made by the Court of District Judge under section 17A may prefer an appeal, to the High Court having jurisdiction over such Court, within thirty days from the date of receipt of the order of the Court of District Judge:

Provided that no appeal shall be preferred unless the borrower has diposited, with the Jammu and Kashmir High Court, fifty per cent. of the amount of the debt due from him as claimed by the secured creditor or determined by the Court of District Judge, whichever is less:

Provided further that the High Court may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent. of the debt referred to in the first proviso.".

Substitution of new section for section 19.

14. For section 19 of the principal Act, the following section shall be substituted, namely:—

Right of borrower to receive compensation and costs in certain cases.

"19. If the Debts Recovery Tribunal or the Court of District Judge, on an application made under section 17 or section 17A or the Appellate Tribunal or the High Court on an appeal preferred under section 18 or section 18A, holds that the possession of secured assets by the secured creditor is not in accordance with the provisions of this Act and rules made thereunder and directs the secured creditors to return such secured assets to the concerned borrowers, such borrower shall be entitled to the payment of such compensation and costs as may be determined by such Tribunal or Court of District Judge or Appellate Tribunal or the High Court referred to in section 18B.".

15. In section 25 of the principal Act,— Amendment of section 25.

(*a*) after sub-section (*1*), the following sub-section shall be inserted, namely:—

"(*1A*) On receipt of intimation under sub-section (*1*), the Central Registrar shall order that a memorandum of satisfaction shall be entered in the Central Register.";

(*b*) in sub-section (*2*), for the words "The Central Registrar shall, on receipt of such intimation", the words, brackets and figures "If the concerned borrower gives an intimation to the Central Registrar for not recording the payment or satisfaction referred to in sub-section (*1*), the Central Registrar shall on receipt of such intimation" shall be substituted.

16. In section 28 of the principal Act, for the words and figures "under section 12", the words, figures and letter "under section 12 or section 12A" shall be substituted. Amendment of section 28.

17. In section 31 of the principal Act, in clause (*g*), for the words "any properties not liable to attachment", the words and brackets "any properties (including the properties specifically charged with the debt recoverable under this Act)" shall be substituted. Amendment of section 31.

18. In section 38 of the principal Act, in sub-section (*2*), after clause (*b*), the following clauses shall be inserted, namely:— Amendment of section 38.

"(*ba*) the fee for making an application to the Debts Recovery Tribunal under sub-section (*1*) of section 17;

(*bb*) the form of making an application to the Appellate Tribunal under sub-section (*6*) of section 17;

(*bc*) the fee for preferring an appeal to the Appellate Tribunal under sub-section (*1*) of section 18;".

CHAPTER III

AMENDMENTS TO THE RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT, 1993

19. In section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereafter in this Chapter referred to as the principal Act), in clause (*h*), after sub-clause (*i*), the following sub-clause shall be inserted, namely:— Amendment of section 2.

51 of 1993.

"(*ia*) the securitisation company ro reconstruction company which has obtained a certificate of registration under sub-section (*4*) of section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;".

54 of 2002.

20. In section 19 of the principal Act, after sub-section (*1*), the following provisos shall be inserted, namely:— Amendment of section 19.

"Provided that the bank or financial institution may, with the permission of the Debts Recovery Tribunal, on an application made by it, withdraw the application, whether made before or after the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Ordinance, 2004 for the purpose of taking action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, if no such action had been taken earlier under that Act:

54 of 2002.

Provided further that any application made under the first proviso for seeking permission from the Debts Recovery Tribunal to withdraw the application made under sub-section (*1*) shall be dealt with by it as expeditiously as possible and disposed of within thirty days from the date of such application:

Provided also that in case the Debts Recovery Tribunal refuses to grant permission for withdrawal of the application filed under this sub-section, it shall pass such orders after recording the reasons therefor.".

CHAPTER IV

AMENDMENTS TO THE COMPANIES ACT, 1956

Amendment of section 4A.

21. In section 4A of the Companies Act, 1956 (hereafter in this Chapter referred to as the principal Act), in sub-section (*1*), clause (*vii*) shall be omitted. 1 of 1956.

Amendment of section 424A.

22. In section 424A of the principal Act, in sub-section (*1*), after the second proviso, the following provisos shall be inserted, namely:—

"Provided also that in case any reference had been made before the Tribunal and a scheme for revival and rehabilitation submitted before the commencement of the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Ordinance, 2004, such reference shall abate if the secured creditors representing three-fourth in value of the amount outstanding against financial assistance disbursed to the borrower have taken measures to recover their secured debt under sub-section (*4*) of section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002: 54 of 2002.

Provided also that no reference shall be made under this section if the secured creditors representing three-fourth in value of the amount outstanding against financial assistance disbursed to the borrower have taken measures to recover their secured debt under sub-section (*4*) of section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement Security Interest Act, 2002.". 54 of 2002.

A. P. J. ABDUL KALAM,
President.

T. K. VISWANATHAN,
Secy. to the Govt. of India.

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